APPEAL NO. 010479

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 30, 2001. The hearing officer held that the appellant (claimant) did not injure her left knee when she broke her left foot. The claimant has appealed, arguing that the biomechanics of the injury, as well as a doctor's opinion, support her. She also asserts that the addendum report from a required medical examination (RME) doctor should not have been admitted over her objection to timely exchange. The carrier responds that the decision is correct.

DECISION

We affirm the hearing officer's decision.

First of all, we agree that the hearing officer abused his discretion in admitting the belated letter of an RME doctor, Dr. L, dated January 4, 2001, but not exchanged until the week before the CCH. We note that the hearing officer states there was good cause but does not describe what it was. No obvious good cause is otherwise present in this record. Dr. L examined the claimant on September 25, 2000, on behalf of the Texas Workers' Compensation Commission (Commission). The carrier's attorney asserted that the carrier had been "requesting" Dr. L's comment on a February 1999 medical record since October 27, 2000, and purportedly again on December 8, 2000. The December 6, 2000, benefit review conference came and went without response from Dr. L. None of these letters are in evidence, but, more to the point, there was no evidence that the carrier sought the assistance of the Commission, who appointed Dr. L in the first place. Whether any telephone follow-up, consistent with reasonable prudence, was conducted at all to get Dr. L's response was undeveloped as well. Therefore, accepting the attorney's statements to the hearing officer as true, the attempts to develop this evidence consisted of two letters sent six weeks apart, with little or no follow-up indicated.

The letter from Dr. L that was eventually exchanged is dated January 4, 2001, and addressed to the carrier; it makes a material change in Dr. L's conclusion, upon which the claimant certainly had relied in preparing her case. It is evidence of this nature that the exchange statute and rules are intended to have developed well before the eleventh hour of an ongoing dispute. The mere fact that the carrier asserts it received the letter by fax from Dr. L, some two and one-half weeks after it was sent, but a mere week before the CCH, does not constitute good cause, given the obvious infrequency of the purported attempts to develop such evidence and its import to the case. Consequently, we have not considered the amended report of Dr. L, admitted in error by the hearing officer.

This does not mean, however, that the decision may be reversed and rendered. The hearing officer did not consider the letter from Dr. L to be the linchpin. He recites and analyzes other evidence that persuaded him that the claimant did not injure her knee when she fell and broke her foot. The claimant argues with some credibility that the nature of her injury certainly lent itself to a contemporaneous knee injury. However, the Appeals Panel has stated that it will not operate as a "second tier" fact finder when the decision is one that

involves the power and duty of the hearing officer to weigh and evaluate the evidence. An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence (as in this case) would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). We cannot agree, therefore, that according to our standard of review the hearing officer erred in his determination, as it is supported by a legitimate construction of the evidence.

That being said, we would caution that while chronology alone does not establish a causal connection between an accident and a later-diagnosed injury (Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994), neither does a delayed manifestation nor the failure to immediately mention an injury to a health care provider necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge